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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 692

HARTFORD ACCIDENT AND INDEMNITY COMPANY,

Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS EX REL. WALTER W. McLAUGHLIN, DIRECTOR OF AGRICULTURE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1935

No. 692

HARTFORD ACCIDENT AND INDEMNITY COMPANY, A CORPORATION,
Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. WALTER W. McLAUGHLIN, DIRECTOR OF AGRICULTURE,
Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS

CONSOLIDATED CAUSES.

Nos. 22532-22533.

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. WALTER W. McLAUGHLIN, DIRECTOR OF AGRICULTURE,
(*Plaintiff*) *Appellee.*

vs.

G. H. CROSS COMPANY, A CORPORATION, AND HARTFORD ACCIDENT & INDEMNITY COMPANY, A CORPORATION,
Defendants.

ON APPEAL OF HARTFORD ACCIDENT AND INDEMNITY COMPANY, A CORPORATION,
Appellant.

STATEMENT AS TO JURISDICTION.

MAY IT PLEASE THE COURT:

The appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represents:

1*h*

A.

Statutory Provisions Sustaining Jurisdiction.

This appeal involves the sole question whether a certain act of the legislature of the State of Illinois, as interpreted and applied by the highest court of the State, is violative of the Commerce Clause of the Federal Constitution. Hence the jurisdiction of this Court on appeal is invoked by reason of Section 237 of the Judicial Code, as amended (28 U. S. C. A., Sec. 344), having reference to appellate jurisdiction of the decrees of State courts by writ of error:

> "• • • where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

And the Act of January 31, 1928 (Ch. 14, 45 Stat. 54; 28 U. S. C. A., Sec. 861a) abolishing the writ of error and providing that all relief which theretofore could be obtained by writ of error shall thereafter be obtainable by appeal, and by the Act of April 26, 1928 (Ch. 440, 45 Stat. 466; 28 U. S. C. A., Sec. 861b) with reference to such appeals.

B.

The Illinois Statute, the Validity of which is Involved.

The Illinois statute, the validity of which is involved, is entitled "An Act to regulate the consignment and sale on commission of farm produce, and to repeal an Act therein named." (Ill. Session Laws of 1919, page 14; Ill. Revised Stat. 1935, Chap. 5, paragraphs 24-32, pages 75-77.)

A full copy of the Act is attached hereto as appendix "A", and for convenience we submit the following summary:

Section 1 (Par. 24 of the Ill. Revised Statutes) undertakes to define the term commission merchant as including every one, whether person or corporation, licensed under the Act to receive, sell or offer for sale on commission

"within this state"

of practically any kind of farm produce. The farm produce is defined so as to include in it practically everything of that general nature.

Section 2 (Par. 25 of Ill. Revised Statutes) prohibits any one from entering into business as a commission merchant without a license. It provides:

> "No person, firm, exchange, association or corporation, shall receive, sell or offer for sale, or solicit, consignments or shipments for sale on commission *within this State* any kind of farm produce, without a license as provided in this Act." (Italics ours.)

It requires a person or corporation seeking a license to apply to the State Director of Agriculture and in his application to state the kinds of farm produce proposed to be handled, the name he proposes to use, and if a firm, the name of the officers, and the name of the local agent, address, etc., and that

> "Such applicant shall further satisfy the Director of his or its character, responsibility and good faith in seeking to carry on a commission business."

It is then provided that the Director of Agriculture shall issue the license upon the payment of ten dollars *and the execution and delivery of a bond* as later provided for. The license permits the applicant to conduct a commission business at the place named until the succeeding first of July. Separate licenses and bonds are required for each location. The license must be posted in the office of the commission merchant.

Section 3, as amended by the Session Laws of 1927, page 6 (Par. 26, Ill. Revised Statutes) provides that before any such license shall be issued the applicant *must* execute and deliver to the Director of Agriculture an indemnity bond in the amount of $5,000, with surety satisfactory to the Director. With reference to the bond it is provided:

> "All bonds to be of a standard form as to terms and conditions, approved by the director, and to secure an honest accounting and handling of produce received, and for the payment to the consignor of all moneys or things of value received for goods consigned to such licensee for sale and to secure consignor against all fraudulent acts of said licensee in the sale or the handling of the goods of consignor."

It is then provided that the Director may bring an action in the appropriate court to recover on behalf of the consignor for the goods sold on commission and not properly accounted for, and for any damages that might have been sustained by the consignor.

In Section 4, as amended by the Session Laws of 1927, page 6 (Par. 27, Ill. Revised Statutes) the Director of Agriculture is given the power to investigate complaints and to investigate irrespective of complaints, the records and business of the applicant, his failure to make proper and true accounts at regular intervals, whether false statements were made as to condition, quality and quantity of goods received, his statements as to market conditions, and "other alleged injurious transactions".

For the purpose of such investigation the books and records of a commission merchant may be examined by the Director of Agriculture and testimony may be taken under oath.

The section further sets up the mechanism whereby the consignor who has not been paid may make a complaint to the Director of Agriculture, and the Director may investi-

gate and conduct a hearing, and upon such hearing make findings of fact. On these findings he may either dismiss the complaint or revoke the license and bring action on the bond.

Section 5 (Par. 28, Ill. Revised Statutes) provides that the Director may refuse to grant a license or revoke one already granted "where he is satisfied of the existence of the following cases, or any of them." Then follows a list of cases, including false charging, failure to account promptly, false statements as to condition, quality and quantity of goods received, false or misleading statements as to market conditions, combinations to fix prices, or where the commission merchant directly or indirectly purchases goods for his own account without authority, where commission merchant is in bankruptcy, or the Director believes that bankruptcy may shortly occur, or where a continued course of dealing is of such a nature as to satisfy the Director of the inability of the licensee to properly conduct the business of a commission merchant, or of intent to deceive or defraud shippers, or where there has been fraud or deception in obtaining the license, or where a new bond is not filed when the old one is held unsatisfactory.

Section 6 (Par. 29, Ill. Revised Statutes) provides for a court review of the action of the Director in refusing to grant or in revoking a license. The license remains in full force pending the appeal.

Section 7 (Par. 30, Ill. Revised Statutes) requires that the commission merchant must keep very full records of all goods received and sales made, and shall retain these records for six months after the sales for the inspection of the Director. The burden of proving the correctness of the records is put on the commission merchant.

Section 8, as amended by the Session Laws of 1927, page 6 (Par. 31, Ill. Revised Statutes) provides that any person

guilty of any one of the listed violations of the Act is guilty of a misdemeanor and subject to a fine of from twenty-five to five hundred dollars. Among the listed violations are a failure to comply with the Act in every respect, and advertising or holding of one's self out as a commission merchant without a license.

The Illinois State authorities interpreted this Act not merely to regulate or require the licensing of the commission merchant business carried on entirely within the State of Illinois, but to regulate and license the business of any commission merchant located in the State in soliciting, receiving and handling on consignment and commission of farm produce to be shipped in, and actually shipped in, from outside the State of Illinois (see stipulation of Facts, 4, 5). In fact in the trial it was stipulated (see paragraphs 4 and 5) that the State authorities insisted that even if a commission merchant were engaged solely and exclusively in soliciting, receiving and handling on consignment and commission farm produce shipped in from outside the State, the Act was mandatory that such a person secure a bond and license before engaging in that business, and that in carrying on the business he submit to the regulations stipulated by the statute.

And in pursuance of this interpretation the Director of Agriculture exacted a license and bond from the G. H. Cross Company, and upon the failure of the Cross Company to pay for certain consignments brought suit on the bonds on account of shipments from outside the State. And the judgments here appealed from are to recover in one case entirely, and in the other case almost entirely, on account of shipments from outside the State.

The defendant upon its first appearance in court raised the constitutional objection that the Act was violative of Article 1, Section 8, Clause 3 of the Constitution of the United States, in that it imposed a restriction on regula-

tion of interstate commerce. Further, that the Congress of the United States in 1930, prior to the exaction of the bond and license, enacted a statute entitled "The Perishable Commodities Act of 1930", 46 Stat. 531, which covers the subject matter of shipments in interstate commerce of perishable commodities, being the same subject matter covered by the Act of the State of Illinois in question as interpreted by the State authorities. (See original affidavits of merits of the defendant, paragraphs 6, 7 and 8. See also amended affidavit of merits, paragraphs 6, 7, 8, 9 and 10.)

The Supreme Court of the State held (See for its opinion *People ex rel., etc.*, v. *G. H. Cross Company et al.*, 361 Ill. 405; 198 N. E. 356) that the act as so interpreted was not in violation of the commerce clause of the Federal constitution, and affirmed the judgments.

C.

Date of the Judgment Sought to be Reviewed and Date upon which Application for Appeal was Presented.

The judgment of the Supreme Court of Illinois, which is sought to be reviewed, was entered on October 14, 1935.

No petition for rehearing was filed within the time provided by the rules of said court (Rule 44). The application for appeal to the United States Supreme Court was presented to the Supreme Court of Illinois and allowed on December 5, 1935.

D.

The Nature of the Case and the Rulings in the Court Below.

The two original suits, later consolidated and tried as one, were brought by the State Director of Agriculture against the G. H. Cross Company and the Hartford Accident & Indemnity Company upon two bonds which covered

two successive years, and which had by color of statute been exacted of the G. H. Cross Company, a corporation regularly engaged in the commission business, as a condition precedent to the issuance of a license to continue in that business.

In the trial of the consolidated cases the facts were stipulated to, and it was also agreed that the facts so stipulated to insofar as they related to the G. H. Cross Company, the construction of the statute by State authorities, and the exaction of the licenses and bonds under the statute in that company's case, applied equally as well to all other persons, firms or corporations in the City of Chicago who solicited, received and handled farm produce for sale on commission (see par. 6 of Stipulation). In other words, the cases were tried to test the question whether the Act in question was constitutional.

The following is a summary of the agreed facts:

The G. H. Cross Company was a corporation of the State of Illinois engaged in the business of soliciting, handling and receiving farm produce. (Paragraph 1 of Stipulation.) All of the farm produce received and handled by it was sold in the original packages as received from the consignors and remained the property of the consignors until sold, and no consignments were purchased by the G. H. Cross Company for its own account and resold by it (paragraphs 1 and 2 of Stipulation).

The Cross Company's business involved the soliciting and handling of consignments not only from consignors in Illinois, but also from consignors outside of the State. In fact, the business represented by consignments from Illinois consignors amounted to less than five per cent of the total volume. Ninety-five per cent of the total volume originated from without and was shipped into the State (paragraph 2 of Stipulation).

The functions of the Cross Company on such transactions were to solicit the consignments, handle them, care for the produce, sell it and account to the consignor.

The G. H. Cross Company could not have continued in business by only handling farm produce originating in Illinois; the shipments from without the State enhanced and increased its business greatly, yet it was necessary to handle some intrastate shipments at certain times (paragraph 3 of Stipulation).

Construing the Act as they did to cover the entire commission business, both intrastate and interstate consignments, the State authorities demanded, and the G. H. Cross Company under compulsion and in order to protect itself from prosecution and the serious penalties prescribed by the statute, made its applications for licenses and secured and delivered the bonds in question, executed by it as principal and the Hartford Accident & Indemnity Company as surety.

One bond covered the period from July 1, 1931, to July 1, 1932; the other from July 1, 1932, to July 1, 1933. They were identical in form and recited that the Cross Company had applied for a license as a commission merchant under the statute in question, and were conditioned that the Cross Company would "honestly account for and handle all the produce received and * * * make payment to the consignors thereof of all moneys or things of value received for goods consigned to said principal for sale, and * * * indemnify and keep indemnified said consignors from and against all fraudulent acts of said principal in the sale or handling of the goods of said consignors, and * * * keep, perform and abide by all the terms, conditions and provisions of said act and all lawful rules and regulations of the Department of Agriculture of the State of Illinois made in pursuance thereof * * *." A copy of the full text of

one of said bonds is for convenience hereto attached as Appendix "B."

The Cross Company became bankrupt (paragraph 9 of Stipulation) and failed to account to a number of consignors whose goods had been shipped in, handled and sold on commission by it. Thereupon the suits in question were brought by the Director of Agriculture on account of such consignors, and their names, places of residence, places of shipments, amounts of goods, prices, etc., were set forth in the statements of claim filed by him in said suits respectively.

In the suit on the first bond there was involved but one shipment, *which was entirely interstate.* It was a shipment of apples in a carload lot from the State of Washington on consignment to the Cross Company to be handled by said Cross Company on a commission basis (paragraph 12 of Stipulation). The suit was to recover on the bond the price of the carload lot, less certain charges.

The suit involving the second bond was for the amount of shipments made from a great number of different points throughout the United States. All of the shipments were on consignment to the Cross Company. Some of them were made from points in Illinois, but a large majority were made from points outside of the State. The total of the shipments from outside of the State was $13,513.59, and from within the State $382.55 (see tabulation of shipments in statement of claim in suit number 2765930 of the Municipal Court, and 22533 of the Supreme Court). Here, too, the suit was to recover on the bond the price of the shipments from without the State as well as those from within the State.

In both cases the defendant maintained that the bonds were void and unenforceable as being exacted under compulsion of the State statute, which was as construed by the State authorities unconstitutional.

In this connection the defendant's contention was:

That if the language "within this State" is construed, as the Supreme Court of Illinois has construed it, so as to require that a commission merchant located within the State of Illinois must have a State license before he can engage in the business of soliciting consignments or shipments from producers located outside of the State, then the statute is a restriction on and a regulation of interstate commerce and operates directly to restrain or burden interstate commerce.

That if the bond provision in the statute is construed so as to require of a commission merchant engaged in the business of soliciting and handling consignments and shipments from outside of the State of Illinois, that he furnish a bond as a condition precedent to his entering into that business, then this provision is a direct burden upon interstate commerce and a direct regulation of interstate commerce.

That it is to be especially noted that this act is not an imposition of a tax or regulation upon the *goods* but is a regulation of the *business of dealing in* those goods in interstate commerce.

That if the requirement as to a license applies to shipments from without the State, every provision of the statute operates to hinder, restrain and burden that interstate commerce.

That if the bond provisions are construed to cover shipments from outside the State, the expense of those provisions and the provisions themselves operate to burden and restrain interstate commerce.

That the statute when so construed being unconstitutional, the application for the license exacted under it and the bond demanded and delivered under its compulsion, are void and of no effect as to interstate shipments.

That on the strength of prior decisions of the Supreme

Court of the State of Illinois (which are also in accord with the decisions of this Court) the fact that the bond was so executed and delivered by the Cross Company, as principal, and Hartford Accident & Indemnity Company, as surety, is not a waiver of the right of either to contend that the statute requiring an application for a license and the furnishing of a bond was unconstitutional, and that the exaction of the bond was illegal and void and unenforceable as to interstate commerce shipments. (*People* v. *Federal Surety Co.*, 336 Ill. 472; *People* v. *Beekman*, 347 Ill. 92; *United States* v. *Tingey*, 5 Pet. 115; *Constable* v. *National Steamship Co.*, 154 U. S. 51, at 78.)

The Supreme Court of the State in giving its decision did not hold that there was any waiver of the right of the defendant to raise the constitutional question involved, and in this followed the law laid down in the decisions cited, but did hold that the statute as so construed by the State authorities was not in violation of the commerce clause of the Federal Constitution.

E.

Cases Believed to Sustain Jurisdiction.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Knights of Pythias v. *Meyer*, 265 U. S. 30.
Appleby v. *City of New York*, 271 U. S. 364.
Ward & Gow v. *Krinsky*, 259 U. S. 503.
Hanover Ins. Co. v. *Harding*, 272 U. S. 494.
Alabama Railway Co. v. *Jackson Ry. Co.*, 271 U. S. 241.
Southern Ry. Co. v. *Kentucky*, 274 U. S. 76.
Sprout v. *City of South Bend*, 277 U. S. 163.
Anglo-Chilean Nitrate Sales Corp. v. *Alabama*, 288 U. S. 218.

Detroit International Bridge Co. v. *Corporation Tax Appeals Board,* 287 U. S. 295.
Bryant v. *Zimmerman,* 278 U. S. 63.
Alpha Cement Co. v. *Massachusetts,* 268 U. S. 203.
Cook v. *Pennsylvania,* 97 U. S. 566.

We therefore respectfully submit that this Court has jurisdiction.

J. F. Dammann,
Arthur L. Israel,
Sidney K. Jackson,
Attorneys for Appellant.

Wilson & McIlvaine,
Of Counsel.

120 W. Adams St.,
Chicago, Illinois.

APPENDIX "A".

STATE OF ILLINOIS.

Henry Horner, Governor.

Commission Merchants Law.

[Seal of the State of Illinois. Aug. 26th, 1818.]

Enforced by the Division of Foods and Dairies of the Department of Agriculture.

Walter W. McLaughlin, Director, Department of Agriculture.

Horace I. Lepman, Superintendent, Division of Foods and Dairies.

Edward F. Gerrity, Assistant Superintendent.

228 S. Wabash Avenue, Chicago.

April, 1934.

Commission Merchants Law.

Smith Hurd, Chap. 5, Sec. 17-24.

Cahill, Chap. 5, Sec. 24-32.

AN ACT *to regulate the consignment and sale on commission of farm produce, and to repeal an Act therein named.* (Approved June 28, 1919, as amended.)

Terms Defined.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* (a) That the term commission merchant shall include every person, firm, exchange, association and corporation licensed under this Act to receive, sell or offer for sale on commission, within this State, any kind of farm produce; except where such farm produce is sold for consumption and not for resale. This Act shall not apply to the sale of farm

produce at public auction by a duly licensed and bonded auctioneer, acting as the agent of another to whom such farm produce shall have been consigned; nor shall this Act apply to seeds sold at retail; nor shall this Act apply to grains and seeds which are classified into grades by any governmental or State Department duly created by any law of the State of Illinois or of the United States.

(b) The term "Farm Produce" shall include all agricultural, horticultural, floricultural, vegetable and fruit products of the soil, and poultry, wool, feathers, fur, hides, eggs, dairy products, nuts and honey, but shall not include timber products, tea or coffee.

(c) The word "Director" when used herein shall have reference to the Director of Agriculture.

License—Application—Fee.] § 2. On and after August first, Nineteen Hundred and Nineteen, no person, firm, exchange, association or corporation, shall receive, sell or offer for sale, or solicit consignments or shipments for sale on commission within this State, any kind of farm produce, without a license as provided in this Act. Every person, firm, exchange, association and corporation in this State receiving farm produce for sale on commission shall, annually, on or before June 1st, file an application with the Director of Agriculture for a license to do a commission business in farm produce. Such applicant shall state the kind or kinds of farm produce which the applicant proposes to handle, the full name of the person, firm, exchange, association or corporation applying for such a license, and if the applicant be a firm, exchange, corporation or association, the full name of each member of the firm, or the names of the officers of the exchange, association or corporation, and the name of the local agent of the exchange or association, and the city, town or village and street number at which the business is to be conducted. Such applicant shall further satisfy the Director of his or its character, responsibility and good faith in seeking to carry on a commission business. The Director shall thereupon issue to such applicant, on payment of ten ($10) dollars and the execution and delivery of a bond as hereinafter provided,

a license entitling the applicant to conduct the business of receiving and selling farm produce on commission at the place named in the application until the first day of July of the year next following. Separate licenses and bonds shall be required for each location at which business is to be conducted; and such license shall be kept posted in the office of such licensee.

Applicant to Give Bond—Who May Bring Action.] § 3. Before any such license shall be issued every applicant shall execute and deliver to the Director of Agriculture an indemnity bond for five thousand ($5,000.00) dollars and with sureties satisfactory to the said Director. All bonds to be of a standard form as to terms and conditions, approved by the Director, and to secure an honest accounting and handling of produce received and for the payment to the consignor of all moneys or things of value received for goods consigned to such licensee for sale and to secure consignor against all fraudulent acts of said licensee in the sale or the handling of the goods of consignor. And the Director may bring an action in any court of competent jurisdiction in the county in which is situated the place of business of the licensee to recover payment for goods sold on commission and not paid to consignor, or not honestly accounted for, and for damages sustained by consignors by reason of such fraudulent acts and wrongful handling and if such licensee has become liable to more than one consignor, and the amount of the bond is insufficient to pay the entire liability, the consignors shall be compensated in proportion to their several claims, the said sums when collected to be promptly paid over to the parties entitled thereto. [As amended by Act approved June 29, 1927.]

Investigation—Notice of Hearing.] § 4. The Director of Agriculture or his assistants shall have power to investigate, upon the verified complaint of an interested person, also to make an investigation irrespective of whether or not a complaint is filed, the record of any person, firm, exchange, corporation or association applying for a license, or any transaction involving the solicitation, receipt, sale or attempted sale of farm produce on a commission basis,

the failure to make proper and true accounts and settlements at prompt and regular intervals, the making of false statements as to condition, quality or quantity of goods received or while in storage, the making of false statements as to market conditions, with intent to deceive, or the failure to make payment for goods received or other alleged injurious transactions; and for such purpose may examine at the place of business of the licensee, that portion of the ledgers, books of account, memoranda or other documents, relating to the transactions involved, of any commission merchant, and may take testimony therein under oath.

When a consignor of farm produce fails to obtain honest accounting in any transaction he shall within sixty (60) days after the shipment of the goods make a demand upon the consignee for either an honest accounting or payment for goods shipped. Ten days after making this demand, if an honest accounting or payment has not been received by the consignor, he shall file with the Director a copy of this demand together with an affidavit setting forth the nature and amount of the goods consigned, the date of the consignment, and the amount he believes to be due and owing him, together with bills of lading and delivery receipts showing the goods were shipped to and received by the consignee. The Director shall attempt to secure an explanation or adjustment; failing this, within seven days after receipt of such complaint from consignor, he shall cause a copy thereof, together with a notice of a time and place for a hearing on such complaint, to be served personally or by mail upon such commission merchant. Such service shall be made at least seven days before the hearing, which shall be held in the city, village or township in which is situated the place of business of the licensee. At the time and place appointed for such hearing, the Director or his assistants shall hear the parties to such complaint, shall have power to administer an oath, and shall enter in the office of the Director at Springfield, a decision either dismissing such complaint or specifying the facts which he deems established on such hearing, and in case such facts are established as cause him to revoke such license, he shall bring an action on the bond within sixty

days of the filing of such decision. (As amended by Act approved June 29, 1927.)

Refusal or Revocation of License.] § 5. The Director may decline to grant a license or may revoke a license already granted where he is satisfied of the existence of the following cases or any of them.

(a) Where false charges have been imposed for handling or services rendered.

(b) Where there has been a failure to account promptly and properly or to make settlements, with intent to defraud.

(c) Where there have been false statements as to condition, quality or quantity of goods received or held for sale on commission when the same might be known on reasonable inspe[illegible]

(d) Where the[illegible] has been false or misleading statement or statements as to market conditions with intent to deceive.

(e) Where there has been a combination or combinations to fix prices.

(f) Where the commission merchant directly or indirectly purchases the goods for his own account without prior authority therefor or without notifying the consignor thereof.

(g) Where the commission merchant is in bankruptcy or in insolvency, or where the Director has reason to believe that bankruptcy or insolvency may shortly occur.

(h) Where there has been a continued course of dealing of such a nature as to satisfy the Director of the inability to properly conduct the business of commission merchant, or of the intent to deceive or defraud shippers.

(i) Where a licensee has been guilty of fraud or deception in obtaining his license.

(j) Where the licensee neglects to file a new bond when notified by the Director that the bond already filed is unsatisfactory.

Action Subject to Review.] § 6. The action of the Director in refusing to grant a license, or in revoking a license granted under this Act, shall be subject to review by a writ of certiorari, and if such proceedings are begun, until the final determination of the proceedings and all appeals therefrom, the license of such commission merchant shall be deemed to be in full force and effect, provided the fees for such license shall have been paid and a bond given as herein required.

Commission Merchant to Keep Record of Produce.] § 7. Every commission merchant shall, upon the receipt of farm produce, and as he handles and disposes of the same, make a record thereof, specifying the name and address of the consignor, the date of receipt, the kind and the quantity of such produce, the condition of the goods upon receipt by licensee, the amount of goods sold, the date of sale, the name and address of the person to whom the goods are sold, his license number where the same can be secured with reasonable diligence, the price received and the items of expense connected therewith; and a memorandum of this record except as to the names and addresses of purchasers of such goods, together with payment in settlement for such shipment, shall be mailed to the consignor within forty-eight hours unless otherwise agreed. The commission merchant shall retain the foregoing record for a period of six months and the same shall be open to the inspection of the Director or his agents. The burden of proof shall be upon the commission merchant to prove the correctness of his records as to any transactions which may be questioned.

Penalty.] § 8. Any person, firm, exchange, association or corporation who shall receive or offer to receive, sell, or offer to sell on commission within this State any kind of farm produce without a license except as in this Act permitted and any person who being a commission merchant in farm produce shall (a) impose false charges for handling or services in connection with farm produce, or (b) fails to account for such farm produce promptly and properly and to make settlements thereof, with intent to defraud, or (c) shall make false or misleading statement or

statements as to market conditions with intent to deceive, or, (d) enter into any combination or combinations to fix prices, or (e) directly or indirectly purchases for his or its own account, goods received by him or it upon consignment without prior authority therefor from the consignor, or shall fail to promptly notify the consignor of such purchase on his or its own account, or (f) any person handling, shipping or selling farm produce who shall make false statements as to grade, condition, markings, quality or quantity of goods shipped, or packed in any manner, with intent to deceive, or (g) shall fail to comply in every respect herewith, or (h) shall advertise or hold one's self out as a commission merchant in farm produce without a license, shall be guilty of a misdemeanor, and punished by a fine of not less than twenty-five ($25.00) dollars nor more than five hundred ($500.00) dollars.

All fines imposed and collected under this Act shall be paid within thirty days after such collection to the Department of Agriculture and by it paid into the State treasury. (As amended by Act approved June 29, 1927.)

Additional copies of this booklet may be secured by addressing the Division of Foods and Dairies, 228 S. Wabash Ave., Chicago.

APPENDIX "B".

Know All Men by These Presents:

That we The G. H. Cross Company, as Principal, and Hartford Accident and Indemnity Company, as Surety, are held and firmly bound unto the People of the State of Illinois in the sum of five thousand ($5,000.00) dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

In Witness Whereof we have hereunto set our hands and seals this 1st day of July, A. D. 1932.

The Condition of the Above Obligation is Such that if

the above bounden principal, who has applied or is about to apply to the Director of Agriculture of the State of Illinois for a license to engage in the business of receiving farm produce for sale on commission until the first day of July, 1933, at 70-72 South Water Market, Chicago, Illinois, in the City of ——, pursuant to the provisions of "An Act to regulate the consignment and sale on commission of farm produce," approved June 28, 1919, in force July 1, 1919, as amended, and who has procured to be furnished this bond in accordance with the provisions of said Act, shall honestly account for and handle all the produce received, and shall make payment to the consignors thereof of all moneys or things of value received for goods consigned to said principal for sale, and shall indemnify and keep indemnified said consignors from and against all fraudulent acts of said principal in the sale or handling of the goods of said consignors, and shall keep, perform and abide by all the terms, conditions and provisions of said Act, and all lawful rules and regulations of the Department of Agriculture of the State of Illinois made in pursuance thereof, then this obligation shall be void; otherwise to be and remain in full force and effect.

THE G. H. CROSS COMPANY, *Pres.* [SEAL.]
ROBERT L. BERNER, *Secy.*
HARTFORD ACCIDENT & INDEMNITY COMPANY, [SEAL.]
By WARD W. WELLAR, *Attorney-in-fact.* [SEAL.]

STATE OF ILLINOIS,
Cook County, ss:

I, Gilbert J. Boie, a Notary Public in and for the County and State aforesaid, do hereby certify that G. H. Cross and Robert F. Berner, who are each personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act for the purposes therein set forth.

GILBERT J. BOIE,
Notary Public.

[Endorsed:] Bond. "An Act to regulate the consignment and sale on commission of farm produce."—Approved June 28, 1919, in force July 1, 1919. Of ——; to People of the State of Illinois. Approved as to form: —— ——, superintendent Division of Foods and Dairies. Approved: —— ——, Director Department of Agriculture.

(7346-C)